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SUBJECT: UNGA: WHAT NEXT FOR WAR CRIMES TRIBUNALS?

¶1. Summary: At the annual reports of the International Criminal Tribunals (ICTs), Western delegations praised the courts' principles and practices, while the Russians called for ending the ICTs turning their jurisdiction back over to national governments. All parties were concerned with the impending expiration of the ICTs' mandates. Discussing next steps after the expiration, the quote of the day came from New Zealand PermRep Rosemary Banks, "Impunity is not an option." End Summary.

¶2. Presidents Dennis Byron of the International Criminal Tribunal for Rwanda (ICTR) and Fausto Pocar of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia (ICTY) presented their reports (A/63/209 and A/63/210, respectively) to the General Assembly in plenary session on October 13. The ICTR report covers the period from July 1, 2007 to June 30, 2008. The ICTY report covers August 1, 2007 to July 31, 2008.

¶3. Time is running out: Byron celebrated the peace and ongoing national reconciliation in Rwanda, and vaunted ICTR's legacy of factual and impartial judgments. His main worries were staff retention, continued flight of the remaining fugitives, and the short time left under the existing UNSC mandate. Pocar expressed parallel same concerns about losing staff and fugitives still at large. He commended Serbia for its cooperation in the arrests of Stojan Zupljanin and Radovan Kardzic, and called for the immediate arrest of Ratko Mladic and Goran Hadzic. Pocar expressed concern that the ICTY will run out of time before the two fugitives are brought to trial.

¶4. Europeans leaning toward mandate extension: With the exception of Russia, all speakers celebrated the arrests of Zupljanin and Karadzic and praised the achievements of the tribunals. Norway and Russia were at polar opposites on the principle of ICTs, with all other speakers closer to Norway's enthusiasm. French PermRep Jean-Maurice Ripert, on behalf of the EU, lauded the quantity of work in both tribunals, and most speakers expressed appreciation for international cooperation. While the ICT presidents asked for more time to fulfill their mandates, national speakers (except Norway) spoke of the need to conclude the tribunals' business. There was a widespread sense of urgency for the arrest of the remaining fugitives. The Russians, in particular want to close the ICTY, but out of opposition to the Tribunal itself, which they do not support.

¶5. Ripert recounted the courts' "extremely positive" record, and their message that "International criminal justice does exist and it will prevail sooner or later". He commended Serbia's cooperation, and urged all states to improve their cooperation with the ICTs. Norway appealed for

follow-through on financial support to the ICTs and international agreements on sentencing. Rwanda expressed appreciation for continued EU support.

¶16. Serbia called for international witness protection, citing the ICTY report's conclusion that intimidation is reducing witnesses willingness to testify.

¶17. Ripert called for the immediate arrest of Mladic, Hadzic, and Rwandan fugitive Felicien Kabunga. Croatia and all other speakers (again with the exception of Russia) echoed this call. Banks, also on behalf of Canada and Australia, called their arrest "crucial" to concluding the work of the ICTs.

¶18. Ripert called attention to the ad hoc nature of the ICTs, which "were not intended to be permanent and will cease to exist when the Security Council deems...the job... accomplished." Banks added, "A key focus for both Tribunals now is the implementation of their completion strategies" and concluded, "CANZ urges both tribunals to continue to identify further reforms that will enable them to complete their work as efficiently and promptly as possible."

¶19. A fork in the road: The question remains on post-tribunal justice. Ripert proposed putting the ICTs into storage once their mandates have expired, "...if there are still high-ranking fugitives at large upon completion of the Tribunals, a mechanism must be set up which can rebuild the capacity to try them once they are arrested." Banks identified the two main options as transfer to national jurisdictions or extension of the ICT mandates. "The view of CANZ is clear - a strategy needs to be devised to ensure that impunity is not an option". The Rwandan PermRep said his

USUN NEW Y 00000998 002 OF 002

countrymen do not want the conclusion of the ICTR to become an amnesty.

¶10. Russia wants to shut down ICTY: The Russian delegation expressed the only contrarian views, "...the Tribunals were established by the Security Council in certain historical circumstances as a temporary measure with the aim of...peace in the region as well as fight against impunity in a situation of the failure of the legal systems of appropriate states....there is a material change in the aforementioned circumstances and the term set forth for these organs is elapsing...(the ICTY's) leadership loses sight of the prescribed parameters of the work of the Tribunal." The Russians criticized the ICTY report for absence of steps toward terminating its operations. "More over the point is maid (sic) that all ICTY indictees should be tried by this organ and not referred to national jurisdictions. This policy, in our view, means the demonstration of mistrust to the national judicial systems of the Balkan States and contradicts SC resolutions 1503 and 1534...International criminal courts have only a complementary role, since they are not capable of replacing national judicial systems....deadlines set forth by the Completion strategy are approaching fast."

Khalilzad